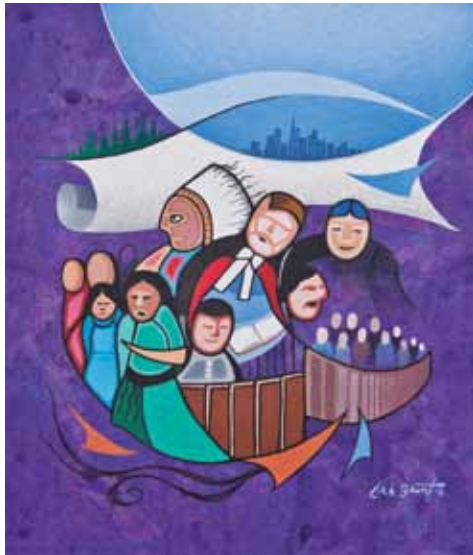


FIRST NATIONS REPRESENTATION ON ONTARIO JURIES

Report of the Independent
Review Conducted by
The Honourable Frank Iacobucci

February 2013

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THIS REPORT IS DEDICATED
TO THE MEN, WOMEN, AND CHILDREN
OF FIRST NATIONS IN ONTARIO WHOSE
PERSEVERANCE AND COURAGE IN THE
FACE OF ADVERSITY AND CHALLENGES
CONTINUE TO BE AN INSPIRATION.

EXECUTIVE SUMMARY



A. PREFACE AND ACKNOWLEDGEMENTS

1. THIS REPORT DEALS WITH ONE OF THE MOST VENERABLE INSTITUTIONS IN HISTORY, THE JURY. MORE SPECIFICALLY IT DEALS WITH THE LACK OF REPRESENTATION OF FIRST NATIONS PEOPLES LIVING IN RESERVE COMMUNITIES ON JURIES IN ONTARIO.

2. As with most issues involving First Nations peoples, it is difficult to deal with one issue in a discrete manner without dealing with the influences of many other factors that impact on the specific issue in question. So it is with representation of First Nations peoples on Ontario juries. What appears at first blush to be a narrow assignment simply on jury representation as set forth in the Order-in-Council, triggers considerations and ramifications from numerous other factors that affect the principal question of my mandate as an Independent Reviewer of the subject. Why that broader inquiry into these important factors is necessary will be dealt with in this Report.

3. However, it should be stated at the outset that, although the Independent Review is not authorized by the Order-in-Council to be a detailed examination of, and recommendations for the reform of, the justice system of the province or for improvements in social and economic programs for First Nations, these matters not only lurk in the background but are also of great relevance. In short, to ignore this background is to jeopardize the chances of making any real progress on the issue of representation of First Nations peoples on juries.

4. As this Report will demonstrate, there is not only the problem of a lack of representation of First Nations peoples on juries that is of serious proportions, but it is also regrettably the fact that the justice system generally as applied to First Nations peoples, particularly in the North, is quite frankly in a crisis. If we continue the *status quo* we will aggravate what is already a serious situation, and any hope of true reconciliation between First Nations and Ontarians generally will vanish. Put more directly, the time for talk is over, what is desperately needed is action.

5. Doing nothing will be a profound shame especially when there has been a greater recognition throughout Canada of the tragic history of Aboriginal people, with many examples of mistreatment, lack of respect, unsound policies, and most importantly a lack of mutual trust between Aboriginal and Non-Aboriginal people. Indeed the setting up of this Independent Review is an example of the recognition of importance of that history by the Government of Ontario and I commend them for that.

6. But if this Report and its recommendations together with their implementation are put on the shelf, we as a society will all be the worse off and the momentum for progress will likely come to a halt. The consequences of this will be very serious.

7. This Independent Review and Report were largely made possible through the efforts of First Nations people, including Chiefs, Councillors, Elders, reserve residents, provincial territorial organizations and their leaders, and even some First Nations students. To all of them I express my sincere gratitude and appreciation for their involvement, sharing their experiences, offering opinions and suggestions, and for extending hospitality and courtesy to my colleagues and me. I cannot name you all, but I can say I am indebted to all of you for your help and commitment in the work of the Review.

8. I also wish to record my gratitude to specific groups and individuals for their invaluable help. These include Nishnawabe Aski Nation (former Deputy Grand Chief Terry Waboose and former Grand Chief Bentley Cheechoo), their counsel Julian Falconer, Julian Roy, Meaghan Daniel, all of whom played a central role in the launching of the Independent Review and organizing visits to reserves in the North which were most important in obtaining the views of First Nations members in different contexts and with different experiences. Also, I would like to thank the Union of Ontario Indians and their counsel Austin Acton, the Chiefs of Ontario, Aboriginal Legal Services of Toronto and their counsel Christa Big

Canoe and Jonathan Rudin. My thanks also go to then Grand Chief Diane Kelly and her colleagues on the Treaty 3 Council of Chiefs. Thanks are also due to Irwin Elman, the Provincial Advocate for Children and Youth. I would also like to thank Marlene Pierre, Sharon Smoke, Chris Moonias and Bruce Moonias, all of whom are family members of First Nation victims whose deaths were subject to a coroner's inquest, for sharing their grief with us and their submissions on coroners inquests and related matters.

9. We received considerable help and cooperation from officials at the Ministry of the Attorney General, Ontario Court Services, the Provincial Jury Centre, and judges of the Superior Court and Ontario Court of Justice and their officials. We have had the benefit of a paper describing experiences of jury role processes in other jurisdictions, prepared by former Attorney General Michael J. Bryant, who currently works as a consultant on Aboriginal issues.

10. For special recognition, I would like to acknowledge the former Attorney General Chris Bentley and current Attorney General John Gerretsen for their cooperation and support. I should also wish to thank especially Murray Segal, the former Deputy Attorney General of Ontario, for his instrumental role in setting up the Independent Review and collaborative effort to support the Review in every way. Thanks are also due to Acting Deputy Attorney General Mark Leach for his cooperation and help.

11. Finally, I should like to thank my team: John Terry, Counsel to the Independent Review, and Candice Metallic, Associate Counsel to the Review. No one could have better or more talented colleagues with whom to work than those two. They played an immensely important role in all phases of the Review and I thank them profoundly. I would also like to thank Nick Kennedy and Ryan Lax, who greatly helped us in the finalization of the Report.

12. Much time, effort and commitment has gone into the preparation of this Report by all those I have mentioned. I believe I express the sentiment of all concerned that improvements to the jury representation of First Nations peoples will be significantly advanced as a result of our collective efforts.

13. We also share a dream that the jury representation changes will spawn other needed improvements to the justice system and to the relationship between Ontario and First Nations peoples.



B. INTRODUCTION AND EXECUTIVE SUMMARY

1. INTRODUCTION

14. This Report will, I hope, be a wake-up call to all who are concerned with the administration of justice in Ontario. As I stated in the Preface above, it has become clear to me in carrying out this Independent Review that the justice system, as it relates to First Nations peoples, and particularly in Northern Ontario, is in crisis. Overrepresented in the prison population, First Nations peoples are significantly underrepresented, not just on juries, but among all those who work in the administration of justice in this province, whether as court officials, prosecutors, defence counsel, or judges. This issue is made more acute by the fact that Aboriginal peoples constitute the fastest-growing group within our population, with a median age that is significantly lower than the median age of the rest of the population.

15. The problem that is the specific focus of this Report – the underrepresentation of individuals living on reserves on Ontario's jury roll – is a symptom of this crisis. It is that narrow problem, and the concerns it raises about the fairness of our jury system, that have rightly prompted the Government of Ontario to arrange for this Independent Review to be carried out. But an examination of that problem leads inexorably to a set of broader and systemic issues that are at the heart of the current dysfunctional relationship between Ontario's justice system and Aboriginal peoples in this province. It is these broad problems that must be tackled if we are to make any significant progress in dealing with the underrepresentation of First Nations individuals on juries. And it is this systemic approach to the issues which has guided me in the conduct of my review and the formulation of my recommendations, as discussed below.

2. MY MANDATE AND WORK

16. I was appointed to carry out this Independent Review by Order-In-Council 1388/2011, dated August 11, 2011. The Order-in-Council, a copy of which is attached as Appendix A to this Report, directed me to make recommendations:

- (a) to ensure and enhance the representation of First Nations persons living on reserve communities on the jury roll; and
- (b) to strengthen the understanding, cooperation and relationship between the Ministry of the Attorney General and First Nations on this issue.

17. I commenced my work in Fall 2011 after assembling a small legal team to assist me. We began the Review by developing a process to gather information from all of those who have been involved in, or are affected by, the juries system in Ontario as it relates to the representation of First Nations peoples on the jury roll. After creating a website for the Independent Review, we set out to develop a process that would allow us to meet and receive submissions from interested First Nations leaders, communities and organizations, officials of the Ministry of Attorney General, Ministry of Health and Long-Term Care, the Provincial Advocate for Children and Youth, other service organizations and members of the judiciary who have presided over cases or motions relating to the issues under review.

18. Hearing from the First Nations leadership, people, and organizations as the first order of business was the best way, in my view, for me to understand and accurately define the systemic issues affecting First Nations peoples living in reserve communities as it relates to jury service. Given the vast diversity of First Nations and Treaty groups and organizations in the Province of Ontario, we determined that the engagement process must begin by introducing the Independent Review to First Nations and inviting them to participate in a manner they deemed appropriate. Accordingly, in November 2011, I sent a letter to all First Nations governments and First Nations and Treaty organizations in Ontario offering to meet with them, receive written submissions, or accommodate a combination of both. A copy of this correspondence is attached as Appendix D to this Report.

19. Between November 2011 and May 2012, I met with the leadership and people from 32 First Nations, mostly within their communities, and four First Nation organizations. This engagement included meetings with First Nations that are members of the Nishnawbe Aski Nation, the Union of Ontario Indians, Grand Council Treaty #3, as well as four First Nations that are unaffiliated with a tribal council or First Nations organization. The list of First Nations that I visited during this phase of the Review is attached as Appendix E to my Report. We also met with representatives of Aboriginal Legal Services of Toronto, who convened a Families Forum at which my team and I met with some family members of First Nations victims whose deaths were subject to a coroner's inquest. Overall, the cumulative meetings and discussions with every person involved helped shape my understanding of the systemic and procedural issues impacting the representation of First Nations peoples on the jury roll in Ontario.

20. Following the First Nations engagement process, I prepared a progress report and a discussion paper, attached as Appendix F to this Report, that I sent to all First Nations in Ontario, First Nation and Treaty organizations, and interested Aboriginal service providers, seeking their further input. The discussion paper set out the issues identified by First Nations during the engagement process and posed questions to solicit feedback on ways to address the challenges associated with the representation of First Nations peoples on juries.

21. Once I became familiar with the issues from the First Nations perspective, we met and had discussions with officials from the Ministry of the Attorney General, including the Court Services Division and the Provincial Jury Centre. We also met with some members of the judiciary who have presided over many cases involving First Nations offenders. Considering the large demographic of First Nations youth in Ontario, we also thought it useful to meet with the Provincial Advocate of Children and Youth in Ontario.

22. We received many written submissions as a result of the engagement process and the feedback requested through the discussion paper, including from, among others, Nishnawbe Aski Nation, the Union of Ontario Indians, the Chiefs of Ontario, Aboriginal Legal Services of Toronto, the Office of the Provincial Advocate for Children and Youth in Ontario, and Legal Aid Ontario.

23. Following receipt of written submissions in early July 2012, I prepared my Report based on all the information received through meetings and written submissions and further research and analysis carried out by my team and me. The Report was substantially completed by the end of August 2012 and provided to translators in early September 2012 for translation into French, Cree, Ojibway, Oji-Cree and Mohawk.

3. ISSUES IDENTIFIED DURING VISITS AND MEETINGS

24. My meetings with First Nations leaders, Elders, people, technicians and service providers from 32 communities during the engagement process played a crucial role in helping me understand the systemic and procedural issues affecting the representation of First Nations peoples on the jury roll in Ontario. During all these meetings, one point was resoundingly clear: substantive and systemic changes to the criminal justice system are necessary conditions for the participation of First Nations peoples on juries in Ontario.

25. Aside from the issues regarding the most effective manner to obtain names of First Nations reserve residents for the purposes of the jury roll, the fact is that many First Nations people are plainly reluctant to participate in the jury system. Many reasons exist for that reticence, and I heard them repeatedly throughout the engagement process.

26. First, First Nations leaders and people spoke about the conflict that exists between First Nations' cultural values, laws, and ideologies regarding traditional approaches to conflict resolution, and the values and laws that underpin the Canadian justice system. The objective of the traditional First Nations' approach to justice is to re-attain harmony, balance, and healing with respect to a particular offence, rather than

seeking retribution and punishment. First Nations people observe the Canadian justice system as devoid of any reflection of their core principles or values, and view it as a foreign system that has been imposed upon them without their consent.

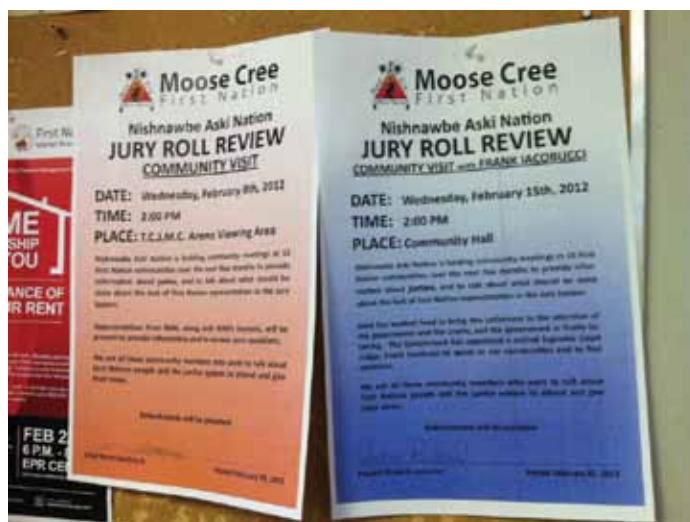
27. Second, First Nations people often spoke of the systemic discrimination that either they or their families have experienced within the justice system in relation to criminal justice or child welfare. These experiences with the criminal justice system, along with historic limitations on the rights of First Nations people, have created negative perspectives and an inter-generational mistrust of the criminal justice system. Such perceptions, by implication, extend to participation in the jury process. First Nations people generally view the criminal justice system as working against them, rather than for them. It is an affront to them to participate in the delivery of this system of justice.

28. Third, First Nations people lack knowledge and awareness of the justice system generally, and the jury system in particular. It was understandably expressed that most First Nations individuals will refrain from participating in a process they know nothing about. Many First Nations people were unaware that the same jury roll was used to select juries for both trials and coroner's inquests. Therefore, most leaders identified the need for a focused and sustained education strategy for First Nations communities with respect to the role of juries in the justice system and the process by which jury rolls and jury panels are created, as well as the rights of individuals accused of offences and the rights of victims.

29. Fourth, First Nations leaders resoundingly and assertively expressed the desire to assume more control of community justice matters as an element of what they strongly believe is their inherent right to self-government, and at the very least be involved in developing solutions to the jury representation issue. Having been introduced to community-based restorative justice initiatives in previous years, First Nations experienced the benefits to their communities that came from the development of a culturally-appropriate approach to justice. However, these programs were discontinued owing to funding cuts and will require financial resources and capacity to be resumed. First Nations leaders were unequivocal that re-introducing restorative justice programs would have multiple benefits at the community level. Such benefits include the delivery of justice in a culturally relevant manner, greater understanding of justice at the community level, increased community involvement in the implementation of justice and, finally, an opportunity to educate people about the justice system and their responsibility to become engaged on the juries when called upon to do so.

30. Fifth, the issue of local police services arose in many discussions throughout the engagement process. It became very clear that inadequate police services and associated funding contribute to negative perceptions of the criminal justice system. Many First Nations were very concerned about the limited and under-resourced police services and the lack of sufficient training for them. Some First Nations leaders expressed frustration regarding the lack of enforcement of First Nation by-laws.

31. A common theme expressed by First Nations leaders was concern for the protection of the privacy rights of their citizens with respect to the unauthorized disclosure of personal information for the purposes of compiling the jury roll. Confusion with respect to the obligations of First Nations governments in this regard appears to be related to different positions taken by Aboriginal Affairs and Northern Development (formerly Indian and Northern Affairs Canada) since 2001. The difficulty of creating and maintaining a single source list of individual residents that includes dates of birth and addresses on reserve is a real challenge because First Nations governments do not typically possess such a list. As an alternative, many First Nations leaders proposed that jury service ought to be voluntary and expressed a willingness to help facilitate such an approach. First Nations representatives also stated that the process to collect names for the purposes of the jury roll must be clear, tangible and consistent throughout all judicial districts in which First Nations are located.



32. First Nations peoples' willingness to participate in the jury process is also negatively affected by the content of the jury questionnaire. There are a number of features that First Nations people identified as discouraging them from responding. First, the statement of penalty of a fine or imprisonment for non-response within five days is viewed as coercive and inappropriately imposing jury duty through intimidation and threat, and the time frame of five days for response is thought to be unreasonable. Second, the requirement to declare Canadian citizenship prompts many to answer in the negative. However, it was expressed that if there were an option to declare First Nation citizenship or membership, many more First Nations people would respond positively,

thereby increasing the number of eligible First Nations jurors. Third, the language requirement for juror eligibility, being English or French, is problematic for First Nations people whose primary language is their indigenous language. It was suggested that broadening the number of languages, along with the provision of translation services, would enhance First Nations responses to jury questionnaires and participation. It was suggested that an exemption be created for First Nations elected leadership, akin to the exemption for federal, provincial and municipal elected officials. Finally, it was explained that First Nations' lack of understanding of the jury selection process and role of juries served as a barrier to responding to jury questionnaires.

33. The engagement process also identified many practical barriers that exist with respect to the participation of First Nations peoples on juries, particularly in northern Ontario. These barriers include: the cost of transportation, where travel arrangements are not pre-arranged by the Court Services Division; inadequate allowances for accommodation and meals; the absence of child and elder care as eligible costs; and lack of income supplements. Further, community-based supports were viewed as a required service to assist with process logistics. Finally, the existence of criminal records and lack of knowledge and access to pardon procedures serves to exclude many potential First Nations jurors.

34. Many First Nations people, specifically those who unfortunately are, or have been, involved in coroner's inquests related to the death of a family member in state care, appreciate the importance of a coroner's jury that is representative of First Nations peoples and were interested in participating in coroner's inquests. They were anxious to see the resolution of this issue so the investigations into the deaths can proceed.

35. First Nations leaders unequivocally asserted that the way forward with respect to enhancing a relationship with the Ministry of the Attorney General in the context of the jury system, and all justice matters, is through a government-to-government relationship and a process that reflects such a relationship. First Nations seek greater control of the justice system as it applies to their people and view the re-integration of restorative justice programs as one measure to achieve this goal. The need for a collaborative approach to develop a proper jury roll process for First Nations peoples on reserve is viewed as a necessary step forward in a respectful relationship. Moreover, partnering with First Nations with respect to educational initiatives aimed at First Nations and government officials would contribute to improving the relationship.

36. Government officials with whom I spoke echoed the need for measures to substantially increase the participation of First Nations reserve residents on juries, in addition to obtaining reliable records required to prepare a representative jury roll. Court officials in the Kenora District, and more recently Thunder Bay, have undertaken various efforts to reach out to First Nations to obtain residence information and have

undertaken programs to educate and inform First Nations communities about the jury system. However, we heard a consensus view among government officials that significant improvements are necessary. Using the data held by the Ontario Health Insurance Plan (OHIP) as one source list of names, addresses and dates of birth of reserve residents, coupled with information-sharing agreements or memoranda of understanding to protect the confidentiality of such information, is an approach worthy of further exploration and discussion with First Nations leadership. Moreover, educational efforts similar to the initiative undertaken by the Ministry of Attorney General and the Union of Ontario Indians and the Grand Council of Treaty #3 to conduct Jury Forums in 15 First Nations could be used as an ongoing measure to educate First Nations peoples on the subject of juries. Other creative approaches were suggested to minimize the burden on First Nations, such as the use of video conferencing technology for the jury selection process and Superior Court of Justice sittings in select First Nations communities.

4. WRITTEN SUBMISSIONS

37. In addition to certain written submissions I received during the engagement sessions, I also received helpful and detailed written submissions at the conclusion of the engagement process from six organizations: Nishnawbe Aski Nation, Union of Ontario Indians, Chiefs of Ontario, Aboriginal Legal Services of Toronto, the Office of the Provincial Advocate for Children and Youth, and Legal Aid Ontario. These organizations' submissions were consistent with the views I heard from First Nations people during the engagement process, emphasizing, among other things, the need to address jury roll reform in partnership with First Nations. As the Nishnawbe Aski Nation stated in its submissions, the underrepresentation of First Nations peoples on Ontario juries "is but one symptom of a larger problem of alienation and exclusion of First Nations people within the justice system."

38. The submissions offered many recommendations on ways in which the systemic and procedural issues related to the jury roll could be addressed. The matters addressed in the recommendations included, among other things: enhancement of community or restorative justice programs; improvements to the operation of the justice system in northern Ontario; uniform coordination and implementation of section 6(8) of the *Juries Act*; the involvement of First Nations peoples in compiling the jury roll; increased language supports with respect to juror questionnaires and translation services; increased juror remuneration and expense allocations; the recruitment of First Nations liaisons; revising the juror questionnaires; meaningful educational, outreach and training initiatives, especially for youth; measures to address inadequate police services in order to increase confidence in the justice system; and the need to take prompt and assertive steps to improve the relationship between First Nations and the Attorney General.

39. I am grateful for the thought and effort that these organizations demonstrated in providing me with these very comprehensive submissions and recommendations.

5. HISTORICAL, LEGAL AND COMPARATIVE RESEARCH

40. In addition to the engagement process and submissions described above, my team and I carried out research respecting various issues, including the history of juries and jury selection in Ontario, the requirement that a jury be representative, and the history and practice with respect to the representation of First Nations peoples on Ontario juries. Juries have served for generations as the cornerstone of our justice system, as well as a fundamental institution in the administration of justice in civilizations dating back to ancient times. Unfortunately, however, the jury system as it has developed and operated in Ontario, like Ontario's justice system in general, has not often been a friend to Aboriginal persons in Ontario. Indeed, criminal jury trials in Canada were used at times as a tool to punish what the British viewed as disloyal behavior on the part of Aboriginal people, and to persecute the customary practices of First Nations on the grounds that they constituted criminal behaviour.

41. Our research focused in particular on the application of, and case law respecting, the requirement in section 6(8) of the *Juries Act* for the sherriff “to obtain the names of inhabitants of the reserve from any record available.”¹ It is clear to me as a result of this research and in particular the materials filed in conjunction with recent court cases respecting this matter that the current reliance by Court Services officials on obtaining the names from Band List information, though resulting from well-meaning efforts, is ad hoc and leads in many cases to out-of-date and otherwise unreliable information being used to compile the jury roll.

42. In accordance with paragraph 4 of the Order-in-Council, I also considered the law and practice in other jurisdictions to assess what lessons we can learn from them. Underrepresentation of Aboriginal peoples on juries is by no means exclusively an Ontarian or Canadian issue. Rather, this issue exists in various jurisdictions that rely on juries and that have sizeable Aboriginal populations, including other Canadian provinces, New Zealand, Australia and the United States. In reviewing law and practice in other jurisdictions, I had the benefit of a paper describing experiences of jury role processes in other jurisdictions prepared by former Attorney General Michael J. Bryant, who currently works as a consultant on Aboriginal issues.

43. I found this review of experience in other jurisdictions to be very helpful. It showed, among other things, that many other Canadian provincial governments rely on health insurance records as a source for compiling the jury roll. The review also revealed a number of practices in other jurisdictions that I have recommended be considered or studied for potential use in Ontario, including allowing individuals to volunteer for jury service as a supplemental source list (as is allowed in New York State), holding court hearings in remote communities, and drawing jurors from residents living reasonably close to where the hearing is held (as is done in the Northwest Territories and Alaska), and, when a jury summons or questionnaire is undeliverable or is not returned, sending another summons or questionnaire to a resident of the same postal code, thereby ensuring that nonresponsive prospective jurors do not undermine jury representativeness (an approach adopted in some U.S. states to respond to underrepresentation of minorities on juries).



¹ *Juries Act*, R.S.O. 1990, c. J. 3, s. 6(8).

6. RECOMMENDATIONS

44. As a result of the engagement process, review of submissions, and research and analysis as described above, I make the following 17 major recommendations.

RECOMMENDATION 1: the Ministry of the Attorney General establish an Implementation Committee consisting of a substantial First Nations membership along with Government officials and individuals who could, because of their background or expertise, contribute significantly to the work of the Implementation Committee. This Committee would be responsible for the oversight of the implementation of the below recommendations and related matters. In view of the importance and urgency of the matter, I recommend that the Committee be established as soon as practically possible.

RECOMMENDATION 2: the Attorney General establish an Advisory Group to the Attorney General on matters affecting First Nations and the Justice System.

RECOMMENDATION 3: after obtaining the input of the Implementation Committee, the Ministry of the Attorney General provide cultural training for all government officials working in the justice system who have contact with First Nations peoples, including police, court workers, Crown prosecutors, prison guards and other related agencies.

RECOMMENDATION 4: the Ministry of the Attorney General carry out the following studies for eventual input by the Implementation Committee:

- (a) a study on legal representation that would involve Legal Aid Ontario, particularly in the north, that would cover a variety of topics, including the adequacy of existing legal representation, the location and schedule of court sittings, and related matters.
- (b) a study on First Nations policing issues, including the recognition of First Nations police forces through enabling legislation, the establishment of a regulatory body to oversee the operation of First Nations law enforcement programs, the creation of an independent review board to adjudicate policing complaints, and the development of mandatory cultural competency training for OPP officers; and
- (c) a review of the Aboriginal Court Worker program and an examination of resources required to improve the program.

RECOMMENDATION 5: the Ministry of the Attorney General create an Assistant Deputy Attorney General (ADAG) position responsible for Aboriginal issues, including the implementation of this Report.

RECOMMENDATION 6: after obtaining the input of the Implementation Committee, the Ministry of the Attorney General provide broader and more comprehensive justice education programs for First Nations individuals, including:

- (a) developing brochures in First Nations languages with plain wording which provide comprehensive information on the justice system, including information respecting the role played by criminal, civil, and coroner's juries;
- (b) establishing First Nations liaison officers responsible for consulting with First Nations reserves on juries and on justice issues;
- (c) commissioning the creation of video or other educational instruments, particularly in First Nations languages, that would be used to educate First Nations individuals as to the role played by the jury in the justice system and the importance of participating on the jury; and
- (d) considering the feasibility of a program that would enlist students from Ontario law schools to participate in intensive summer education and legal assistance programs for First Nations representatives, dealing with the justice system generally and the jury system in particular, in consultation with Chiefs, and Court Services officials.

RECOMMENDATION 7: with respect to First Nations youth, in addition to having a youth member on the Implementation Committee, the Implementation Committee should request that the Provincial Advocate for Children and Youth facilitate a conference of representative youth members from First Nations reserves to focus on specific issues in the relationship between youth, juries, and the justice system, addressed in this report. The Provincial Advocate for Children and Youth should prepare a report on that conference; prior to submitting the report to the Implementation Committee the Provincial Advocate for Children and Youth should consult with PTOs and other First Nations associations.

RECOMMENDATION 8: the Ministry of the Attorney General, in consultation with the Implementation Committee, undertake a prompt and urgent review of the feasibility of, and mechanisms for, using the OHIP database to generate a database of First Nations individuals living on reserve for the purposes of compiling the jury roll.

RECOMMENDATION 9: in connection with this review, the Ministry of Attorney General and First Nations, in consultation with the Implementation Committee, consider all other potential sources for generating this database, including band residency information, Ministry of Transportation information and other records, and steps that might be taken to secure these records, such as a renewed memorandum of understanding between Ontario and the Federal government respecting band residency information or memorandums of understanding between Ontario and PTOs or First Nations, as appropriate.

RECOMMENDATION 10: the Ministry of the Attorney General, in consultation with the Implementation Committee, consider amending the questionnaire sent to prospective jurors to:

- (a) make the language as simple as possible;
- (b) translate the questionnaire into First Nations languages as appropriate;
- (c) remove the wording threatening a fine for non-compliance and replacing it with wording stating simply that Ontario law requires the recipient to complete and return the form because of the importance of the jury in ensuring fair trials under Ontario's justice system;
- (d) on the premise that a First Nations member living on reserve in Ontario satisfies the Canadian citizenship requirement under s. 2(b) of the *Juries Act*, add an option for First Nations individual to identify themselves as First Nations members or citizens rather than Canadian citizens;
- (e) enable First Nations elected officials, such as Chiefs and Councillors, as well as Elders, to be excluded from jury duty; and
- (f) provide, through an amendment to the *Juries Act*, for a more realistic period than the current five days for the return of jury questionnaires.

RECOMMENDATION 11: the Ministry of the Attorney General, in consultation with the Implementation Committee, consider implementing the practice from parts of the U.S., that when a jury summons or questionnaire is undeliverable or is not returned, another summons or questionnaire is sent out to a resident of the same postal code, thereby ensuring that nonresponsive prospective jurors do not undermine jury representativeness.

RECOMMENDATION 12: the Ministry of the Attorney General, in consultation with the Implementation Committee, consider a procedure whereby First Nations people on reserve could volunteer for jury service as a means of supplementing other jury source lists.

RECOMMENDATION 13: the Ministry of the Attorney General, in consultation with the Implementation Committee, consider enabling First Nations people not fluent in English or French to serve on juries by providing translation services and by amending the jury questionnaire accordingly to reflect this change.



RECOMMENDATION 14: the Ministry of the Attorney General, in consultation with the Implementation Committee, adopt measures to respond to the problem of First Nations individuals with criminal records for minor offences being automatically excluded from jury duty by:

- (a) amending the *Juries Act* provisions that exclude individuals who have been convicted of certain offences from inclusion on the jury roll, to make them consistent with the relevant *Criminal Code* provisions, which exclude a narrower group of individuals;
- (b) encouraging and providing advice and support for First Nations individuals to apply for pardons to remove criminal records; and
- (c) considering whether, after a certain period of time, an individual previously convicted of certain offences could become eligible again for jury service.

RECOMMENDATION 15: the Ministry of the Attorney General discuss with the Implementation Committee the advisability of recommending to the Attorney General of Canada an amendment to the *Criminal Code* that would prevent the use of peremptory challenges to discriminate against First Nations people serving on juries.

RECOMMENDATION 16: in view of the concerns I have heard and the fact that current jury compensation is not consistent with cost-of-living increases, I recommend that the Ministry of the Attorney General refer the issue of jury member compensation to the Implementation Committee for consideration and recommendation.

RECOMMENDATION 17: the Ministry of the Attorney General, in consultation with the Implementation Committee, institute a process that would allow for First Nations individuals to volunteer to be on the jury roll for the purposes of empanelling a jury for a coroner's inquest.

45. For a complete explanation of the recommendations, see paragraphs 347 to 386.

7. ACKNOWLEDGEMENT

46. The preparation of this Report would not have been possible without the participation and assistance of many First Nations people, including Chiefs, Councillors, Elders, members of reserves, provincial territorial organizations and their leaders, and even some First Nations students. I also benefitted greatly from the contributions of the lawyers who acted for various organizations and from government officials, all of whom were very fair and candid in their assessments of the shortcomings of current conditions.

47. It is my sincere hope that the trust that First Nations people have invested in this Independent Review process will be rewarded with prompt response and action by the Government of Ontario.

